



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on September 16, 2004

NOTICE OF ACTION TAKEN – DOCKET OST 2004-19016

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: JETALLIANCE FLUGBETRIEBS AG d/b/a JAF AIRSERVICE (JAF Airservice)

Date Filed: August 27, 2004¹

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to engage in the following: (1) charter foreign air transportation of persons, property and mail between Austria and the United States, whether directly or via intermediate points in other countries, with or without stopovers, and beyond; and (2) other charter operations to and/or from the United States, under 14 CFR Part 212.

Statement of Authorization under 14 CFR Part 212: To permit the applicant to operate one passenger charter flight, on behalf of Intrav, Inc., over the following routing: Vienna – New York - Prague – Krakow – St. Petersburg – Moscow – Dubrovnik – Split – Thessaloniki – Rhodes – Istanbul – Nevsehir – Venice – Madrid – Granada – Fez - New York – Vienna, during the period of September 27, 2004 – October 22, 2004.

If renewal, date and citation of last action: New authority.

Applicant representative: Don Hainbach 202-776-3970

DOT analyst: Mala Malhotra 202-366-2375

Responsive pleadings: None.

DISPOSITION

Action: Approved.

Action date: September 16, 2004

Effective dates of authority granted: The exemption is effective September 16, 2004, through September 16, 2005. The statement of authorization is effective September 16, 2004 through October 22, 2004.

Basis for approval: The exemption authority is encompassed by the United States – Austria Air Transport Agreement (Agreement), and the statement of authorization grant is based on comity and reciprocity with Austria.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Standard exemption conditions (attached).

Remarks/Special conditions: The exemption authority that JAF Airservice requests is encompassed by the U.S. – Austria Agreement. The applicant is properly designated under that Agreement and is also licensed by its homeland authorities to conduct the services it seeks. Based on the record in this case, we found that JAF Airservice is substantially owned and effectively controlled by citizens of Austria and is operationally and financially qualified to undertake its proposed operations. Further, the FAA advised us that it knows of no reason to withhold this authority.

In conducting these exemption operations, JAF Airservice must adhere to the terms, limitations, and conditions of the U.S. – Austria Agreement. Moreover, the exemption authority granted authorizes the applicant to conduct charter

¹ Together with its application, JAF Airservice filed a motion for confidential treatment of certain of its financial submissions (balance sheets, and profit/loss statements). In our view the applicant has demonstrated good cause for favorable action on its motion, and we grant it.

operations between Austria and the United States, either directly or via intermediate points in other countries, with or without stopovers, and beyond. The operation of other charters to/from the United States, however, are subject to prior approval under 14 CFR Part 212.

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) the applicant was qualified to perform its proposed operations; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

FOREIGN CARRIER EXEMPTION CONDITIONS

ATTACHMENT

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- 1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- 2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- 3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- 4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- 5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- 6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- 7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- 8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- 9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- 10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- 11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.

05/2004